

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARTIN RESENDEZ GUAJARDO,

Plaintiff,

No. C 08-1929 PJH

v.

MICHAEL B. MUKASEY, United States
Attorney General, et al.,

Defendants.

**ORDER DENYING APPLICATION FOR
TEMPORARY RESTRAINING ORDER;
ORDER SETTING HEARING DATE FOR
MOTION FOR PRELIMINARY
INJUNCTION**

Plaintiff Martin Resendez Guajardo filed this action on April 11, 2008, seeking injunctive and declaratory relief. He also filed an application for a temporary restraining order and a request for an order to show cause re preliminary injunction.

Plaintiff is an attorney who is currently an active member of the State Bar of California. He was admitted to the Bar of the Ninth Circuit Court of Appeals in 1983, but resigned on June 26, 2007, with charges pending against him. On November 1, 2007, the Ninth Circuit issued an order accepting plaintiff's resignation, and also noting that plaintiff had admitted violations of the court's rules and orders.

On February 14, 2008, the Office of General Counsel for the Executive Office for Immigration Review petitioned for plaintiff's immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts. On February 20, 2008, the Department of Homeland Security asked that plaintiff be similarly suspended from practice before that agency.

On March 5, 2008, the Board of Immigration Appeals granted the petitions, and ordered that plaintiff be suspended pending final disposition of disciplinary proceedings.

1 Plaintiff requested reconsideration, and on March 26, 2008, the Board denied the request.

2 Plaintiff now seeks a temporary restraining order enjoining the defendants from
3 enforcing the March 5, 2008, order, and reversing the March 26, 2008, order denying the
4 request to set aside the immediate suspension.

5 A temporary restraining order is a form of preliminary injunctive relief. Its sole
6 purpose is to preserve the status quo pending hearing on the moving party's application for
7 a preliminary injunction. Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck
8 Drivers, 415 U.S. 423, 439 (1974). "Status quo" means the last uncontested status that
9 preceded the pending controversy. GoTo.com, Inc. v. Walt Disney Co., 202 F.3d 1199,
10 1210 (9th Cir. 2000).

11 In this case, plaintiff is not seeking to preserve the status quo pending a
12 determination on the merits. Rather, plaintiff is seeking a mandatory injunction that would
13 alter the status quo by commanding the BIA to reverse its suspension order. In other
14 words, he seeks an order granting the ultimate relief he seeks in this action. The court is
15 not persuaded by the arguments plaintiff makes in support of his TRO application, as there
16 is no status quo to preserve pending the court's ruling on the motion for preliminary
17 injunction. Accordingly, the application is DENIED.

18 The court will consider the request for an order to show cause re preliminary
19 injunction to be a motion for preliminary injunction, which the court will set for hearing on
20 the usual 35-day motions hearing schedule. The court will hear the motion on Wednesday,
21 May 21, 2008, at 9:00 a.m., in Courtroom 3 of the Federal Building, 450 Golden Gate, San
22 Francisco, California. The opposition shall be filed no later than April 30, 2008, and the
23 reply shall be filed no later than May 7, 2008.

24
25 **IT IS SO ORDERED.**

26 Dated: April 11, 2008



27 PHYLLIS J. HAMILTON
28 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARTIN R GUAJARDO,
Plaintiff,

Case Number: CV08-01929 PJH

CERTIFICATE OF SERVICE

v.

MICHAEL B MUKASEY et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 14, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Martin Resendez Guajardo
555 Clay Street
San Francisco, CA 94111

Dated: April 14, 2008



Richard W. Wieking, Clerk
By: Nichole Heuerman, Deputy Clerk